

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

|                        |   |                     |
|------------------------|---|---------------------|
| DENNIS SMITH,          | ) |                     |
|                        | ) |                     |
| Plaintiff,             | ) |                     |
|                        | ) |                     |
| v.                     | ) | C.A. No. 98-639-JJF |
|                        | ) |                     |
| EX-POLICE CHIEF GUY D. | ) |                     |
| BAYNARD,               | ) |                     |
|                        | ) |                     |
| Defendant.             | ) |                     |

**DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES**  
**IN SUPPORT OF MOTION TO STRIKE EXHIBITS A AND B**  
**ATTACHED TO PLAINTIFF'S MOTION TO RECUSE**

1. On July 19, 2007 plaintiff filed papers which contained the designation "Motion to Disqualify." On August 2, 2007 the Court ordered that such papers "be docketed as a Motion to Recuse." (D.I. 142). Plaintiff attached as Exhibit A to the Motion a tape recording of a portion of a February 22, 2007 settlement discussion between undersigned defense counsel and plaintiff. Plaintiff also included in Exhibit B to the Motion reference to a statement made by undersigned counsel at a "June 12, 2007 settlement meeting."

2. Federal Rule of Evidence 408 expressly bars all "[evidence] of conduct or statements made in compromise negotiations." The Rule implements a policy favoring settlements by providing a neutral environment in which parties may negotiate without prejudice to their substantive rights. Vardon Golf Co., Inc. v. BBMG Golf Ltd., 156 F.R.D. 641 (N.D. Ill 1994).  
Introducing details of settlement negotiations into the Court

record has a chilling effect on the parties' willingness to enter into settlement negotiations. In Line Connection Corp. v. AOL Time-Warner, 470 F. Supp. 2d 435 (D. Del. 2007).

3. The alleged statements attributed to undersigned counsel by Mr. Smith in Exhibits A and B attached to the Motion to Recuse were clearly made in the context of settlement negotiations. Plaintiff's references to such statements should be stricken from the record. See Fed. R. of Civ. Pro. 12(f) ("[Upon] motion made by a party...the Court may order stricken from any pleading...any immaterial...matter").

**WHEREFORE**, defendant requests that all references to statements made during settlement negotiations contained in Exhibits A and B to Plaintiff's Motion to Recuse be stricken from the record.

**AKIN & HERRON, P.A.**

/s/ Bruce C. Herron  
Bruce C. Herron  
Attorney I.D. No.: 2315  
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(302) 427-6987  
Attorney for Defendant

Dated: August 7, 2007

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| DENNIS SMITH,          | ) |                     |
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| EX-POLICE CHIEF GUY D. | ) |                     |
| BAYNARD,               | ) |                     |
|                        | ) |                     |
| Defendant.             | ) |                     |

**NOTICE OF SERVICE**

I HEREBY CERTIFY that on this 7<sup>th</sup> day of August, 2007, a copy of DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE EXHIBITS A AND B ATTACHED TO PLAINTIFF'S MOTION TO RECUSE was served electronically and mailed first class upon the following party:

Mr. Dennis Lee Smith  
P.O. Box 311  
Selbyville, DE 19975

**AKIN & HERRON, P.A.**

/s/ Bruce C. Herron  
Bruce C. Herron  
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